

TERMS AND CONDITIONS

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TERMS AND CONDITIONS

1. The Contract

1.1. *Offer and Acceptance.* Each purchase order that Buyer issues (“**Purchase Order**”) is Buyer’s offer to purchase the products (“**Products**”) and services (“**Services**”) identified in that Purchase Order. Seller will be deemed to have accepted a Purchase Order as issued (a) if Seller performs any work or renders any services related to Products; (b) if Seller delivers any Products or provides any Services, or (c) if Seller acknowledges in writing (including by email) its acceptance of the Purchase Order. Seller’s signed acceptance of a Purchase Order is not a condition to Seller’s acceptance of a Purchase Order under **Sections 1.1(a)** and **1.1(b)**. Upon acceptance, a Purchase Order together with these Terms and Conditions and any other documents specifically incorporated into the Purchase Order or separately issued by Buyer, such as releases, or agreed to by Buyer and Supplier in writing (including by email), such as specifications, drawings, requirements of Buyer’s customer, or quality requirements, will become a binding contract between Buyer and Seller (collectively, the “**Contract**”). Specific terms and conditions on the Purchase Order and the other documents comprising the Contract will take priority over any inconsistent provisions in these Terms and Conditions. No terms and conditions other than those described in this **Section 1.1** will comprise the Contract, including any terms and conditions submitted by Seller and not agreed to by Buyer in writing (including by email).

1.2. *Changes.* Buyer may at any time by notice to Seller make changes to the commercial terms of the Contract, including but not limited to the term, drawings, specifications, materials, packaging, testing, quantity, time or method of delivery or shipment, or similar requirements prescribed in the Contract. Any claim by Seller for a price adjustment based on costs resulting from a change must be asserted in writing within ten (10) days from the date of receipt by Seller of Buyer’s notice of a change. At Seller’s request, if made with appropriate supporting documentation, Buyer and Seller will agree upon an equitable adjustment to the Contract prices resulting from a change made by Buyer. Buyer may audit all records, facilities, processes, work or materials of Seller that are relevant to Seller’s claim for a price adjustment resulting from a change made by Buyer. Seller will implement a change made by Buyer as and when specified by Buyer, even if Buyer and Seller are attempting to agree upon an equitable price adjustment resulting from a change made by Buyer. Supplier may not unilaterally make any change to the commercial terms of the Contract, or to the Products or Services.

2. Products and Services

2.1. *Quantity.* If quantities of Products to be purchased by Buyer are not specified in the Contract, they will be as stated in Buyer’s firm releases issued to Seller from time to time. Buyer may return over-shipments to Seller at Seller’s expense. Unless otherwise specifically stated in the Contract, the Contract is not exclusive and Buyer may purchase similar products and services from third parties.

[Optional Provision Concept: Buyer will purchase and Seller will sell 100% of Buyer’s requirements of Products for the term of the Contract. Note: If a 100% requirements contract is

not desired, then a quantity should be specified on the face of the purchase order to avert a claim that a contract has not been formed because a quantity has not been specified.]

2.2. *Volume Projections.* Buyer may provide Seller with estimates, forecasts or projections of its anticipated future quantity requirements for Products. They will be provided by Buyer for informational purposes only. They will not express Buyer's intent to purchase anticipated future quantity requirements, and they may not be construed by Seller as a commitment by Buyer to do so.

[Optional Provision Concept: Buyer is obligated to establish a peak requirements capacity plan. Buyer and Seller will negotiate compensation for adding capacity if Buyer's requirements exceed Seller's capacity. Ref. C5.]

2.3. *Current-Model Service Requirements.* During the term of the Contract and for ten (10) years thereafter, Seller will, if requested by Buyer, provide Products to Buyer for Buyer's service, aftermarket and warranty requirements. The prices for such Products during the term of the Contract will be the then-current production prices under the Contract plus any additional costs for special packaging, shipping or handling.

[Optional Provision Concept: If Buyer will require parts that are incorporated into Products, then Buyer will provide such parts at prices that in the aggregate are no greater than the price for Products. Ref. C13.]

[Optional Provision Concept: Prices for three (3) years after the term of the Contract will be the production prices applicable at the end of the term of the Contract plus additional costs for special packaging, shipping or handling. Prices for the remainder of the ten (10)-year period will be the same plus or minus changes in the cost of materials and a volume-related price adjustment relating to any increase in cost resulting from producing fewer parts. Ref. C13.]

3. Delivery

3.1. *Packing and Shipment.* Seller will comply with Buyer's specifications as to the method of transportation, assigned carriers, and the type and number of packing slips and other documents to be provided with each shipment. Seller will pack and ship Products in accordance with Buyer's instructions, including but not limited to labeling and hazardous materials instructions. If Buyer has not provided packing or shipping instructions, Seller will pack and ship Products in accordance with sound commercial practices. If Seller is required to use Buyer's returnable packaging, Seller will be responsible for cleaning and returning the returnable packaging.

3.2. *Delivery Schedules.* Time is of the essence. Seller will deliver Products and Services within the time specified in the Contract. Unless otherwise stated in the Contract, Products will be delivered [insert shipping term] and title will transfer upon [insert point of transfer]. [Optional Provision Concept: Title and risk of loss will pass at the time and place of delivery in accordance with the delivery term on the Purchase Order.] If Products are not delivered or Services are not performed by the agreed time, then all resulting damages suffered by Buyer, including but not limited to the cost of expedited transportation, other special transportation, or

other damages incurred by Buyer in its efforts to mitigate damages resulting from late delivery of performance, will be Seller's responsibility.

4. Delivery of Nonconforming Goods; Inspection

Buyer may inspect all aspects of Seller's operation involved in supplying Products, including but not limited to Seller's facilities, equipment, production processes and Property. Buyer may conduct testing at Seller's premises to verify or evaluate Seller's performance under the Contract. Buyer is not required to inspect Products or Services, and no inspection or failure to inspect will reduce or alter Seller's obligations under the Contract. Seller waives any right to require that Buyer conduct inspections of Products or Service.

5. Taxes

Product prices include all applicable duties and taxes, including but not limited to federal, state, provincial, and local taxes. Seller will separately itemize any such duties and taxes on its invoices. Upon Buyer's request, Seller will provide Buyer with documents and information that Buyer may require to substantiate such taxes and duties.

6. Payment

Payment terms are as set forth in the Contract. [Optional Provision Concept: Specify payment terms within these terms and conditions. Ref. F10.] Seller will promptly submit correct and complete invoices with appropriate supporting documentation and other information reasonably required by Buyer after delivery of Products and performance of Services, and the payment period corresponding to applicable payment terms will not commence until Buyer has received a correct and complete invoice that meets all of Buyer's requirements. Seller will accept payment by check or other cash equivalent, including electronic funds transfer. Buyer will pay Seller in the currency specified in the Contract. [Optional Provision Concepts: 1) Payment will be made in the currency of the location where the Products are manufactured or the Services are performed. 2) If the applicable currency is not specified in the Contract, payment will be made in the currency of the location where the Products are manufactured or the Services are performed. Ref. F10.] Buyer may at any time and without notice setoff or recoup against, or deduct from, financial claims of Seller against Buyer that are due or to become due, including payments for Products or Services, against any claims that Buyer has or may have against Seller that arise out of the Contract or any other transactions between Buyer and Seller.

7. Product Warranties

7.1. Seller's Warranties. Seller warrants that Products and Services will:

- (a) conform in all respects to the specifications, drawings, statements of work, samples, other descriptions, performance standards, performance requirements, and product characteristics furnished or specified by Buyer in the Contract or otherwise;
- (b) be merchantable;
- (c) be free from defects in materials and workmanship;

- (d) be transferred to Buyer with good title, free of all liens, encumbrances, and rights of third parties (except those created by Buyer);
- (e) be free from defects in design to the extent designed by Seller; and
- (f) be fit and sufficient for the use and purposes intended by Buyer, including but not limited to their performance in the component, system, subsystem and vehicle location specified by the Buyer and the environment in which the Products and Services are or reasonably may be expected to perform.

These warranties are in addition to any warranties implied by law or otherwise made by Seller. Seller will be liable to Buyer for all direct, incidental and consequential damage, losses, costs and expenses that are incurred by the Buyer and result from the failure of the Seller to deliver Products or Services that conform with the warranties in this **Section 7.1**. The duration of warranties in this **Section 7.1** will begin upon the date that Products or Services are delivered to Buyer and end on the later of the date upon which the duration of warranties offered by the vehicle manufacturer into whose vehicles the Products or Services are incorporated ends, the date upon which the duration of warranties offered by any supplier in a tier higher than Buyer into whose goods or services the Products or Services are incorporated ends, or the date upon which any warranty required by applicable laws may end.

7.2. *Non-Conforming Products.* Without limiting Buyer's additional remedies, including those set forth in **Section 7.3**, Buyer may, with respect to Products or Services that do not conform to the warranties in **Section 7.1**, (a) reject the non-conforming Products or Services, (b) require Seller, at Seller's risk and expense (including applicable shipping costs), to either repair or replace the nonconforming Products or Services, or to otherwise remedy any nonconformity with respect to the warranties in **Section 7.1**, (c) itself repair or replace the nonconforming Products or Services, or otherwise remedy any nonconformity with respect to the warranties in **Section 7.1**, and/or (d) require Seller, at its risk and expense, to implement containment, inspection, sorting, and other quality assurance procedures.

[Optional Provision Concepts: The Seller will be permitted to remedy a non-conformity, but if the Buyer determines that the remedial work cannot be done without delaying or disrupting Seller's production, then the Buyer may resort to the other options above.]

7.3. *Recalls.* This **Section 7.3** applies to any voluntary or government-mandated offer by Buyer (or the vehicle manufacturer) to vehicle purchasers to remedy an alleged defect that affects motor vehicle safety or to address an alleged failure of a vehicle to comply with an applicable motor vehicle safety standard or guideline (a "Recall"). If Seller is liable for a Recall, the extent of Seller's liability will be negotiated on a case-by-case basis based on (a) a good faith allocation of responsibility for the Recall, (b) the reasonableness of the costs and damages incurred, (c) the quantity purchased and Contract price of the affected Products, and (d) other relevant factors. As a condition precedent to Seller's liability under this **Section 7.3**, Buyer must (i) notify Seller as soon as practicable after Buyer learns that a Recall being considered implicates the Products, (ii) provide Seller with available performance evaluations, accident reports, engineering investigations, and other data relating to the potential Recall, (iii) provide Seller a reasonable opportunity to participate in inquiries and discussions among Buyer, its

customer, and governmental agencies regarding the need for and scope of the Recall, and (iv) consult with Seller about the most cost-effective method of modifying or replacing vehicle systems or component parts, including the Products, in order to remedy the alleged defect or non-compliance.

8. Indemnification

Seller will indemnify and defend Buyer, its subsidiaries, and their respective employees, officers, directors, agents or representatives, against third-party claims for injury or death to persons, property damage, economic loss, and any resulting damages, losses, costs, and expenses (including reasonable legal fees), regardless of whether the claim or demand arises under tort, contract, strict liability, or other legal theories, if and to the extent caused by (a) Seller's defective design or manufacture of Products, (b) the provision of Services, (c) Seller's acts or omissions in its performance under the Contract, or (d) Seller's breach of, or non-performance under, the Contract.

[Additional Provision Concept: If Seller is performing work on Buyer's premises, it will indemnify Buyer against any liability resulting from such work. Ref. F25.]

9. Compliance with Laws

Seller will comply with applicable laws, including but not limited to regulations and executive orders. Seller will provide Buyer with material safety data sheets regarding the Products and, upon Buyer's request, will provide Buyer with other information reasonably required by Buyer to comply with applicable laws.

[Additional Provision Concept: Seller will not utilize slave, prisoner or child labor. Ref. C24.]

[Additional Provision Concept: Buyer encourages Seller to use diverse suppliers. Ref. C25.]

[Additional Provision Concept: Seller will comply with all requirements for government subcontractors. Ref. F36.]

10. Intellectual Property Rights

10.1. *Buyer's Intellectual Property*. Buyer does not transfer to Seller any patent, trade secret, trademark, service mark, copyright, mask work, or any other intellectual property right ("*Intellectual Property Right*") of Buyer in information, documents, or property that Buyer makes available to Seller under the Contract, other than the right to use Buyer's Intellectual Property Rights to produce and supply Products and Services to Buyer.

10.2. *Seller's Intellectual Property*. If the Contract is terminated by Seller or Buyer pursuant to **Section 12.1**, Seller grants to Buyer a non-exclusive, worldwide, paid-up, irrevocable and perpetual right and license to use Seller's Intellectual Property Rights, including those associated with Property purchased by Buyer from Seller in accordance with **Section 11.1(c)**, to obtain from alternate sources products and services similar or identical to the Products and Services for use in vehicles or component parts covered by the terminated Contract.

10.3. *Infringement.* Seller will indemnify and defend Buyer and its customers against claims, liabilities, losses, damages, costs, and expenses, including reasonable legal fees, arising out of the actual or alleged infringement or contributory infringement by the Products of a third-party Intellectual Property Right. If a claim under this **Section 10.3** results, or is likely to result, in an injunction or other order that would prevent Seller from supplying or Buyer from using Products for their intended purpose, Seller will at its option and expense either (a) secure a license of the Intellectual Property Right that permits Seller to continue supplying the Products to Buyer, or (b) modify the Products so that they become non-infringing, so long as the modification does not materially alter the operation or performance of the Products, or (c) replace the Products with non-infringing but practically equivalent Products.

11. **Property**

11.1. *Buyer's Property.*

(a) Buyer will own the tooling, jigs, dies, gauges, fixtures, molds, patterns, supplies, materials, and other equipment and property used by Seller to manufacture, store, and transport Products or provide Services, whether tangible or intangible ("**Property**") if (i) the Property is so designated in the Contract, or (ii) Buyer or its customer has provided, paid for or elects to purchase the Property ("**Buyer's Property**"). Seller will assign to Buyer contract rights or claims in which Seller has an interest with respect to Buyer's Property and execute bills of sale, financing statements, or other documents reasonably requested by Buyer to evidence its or its customer's ownership of Buyer's Property. Seller will indemnify and defend Buyer against claims or liens adverse to Buyer's or its customer's ownership of Buyer's Property except those that result from the acts or omissions of Buyer or its customer. Seller will hold Buyer's Property on a bailment basis and will be responsible for loss or damage to Buyer's Property while in its possession or control. To the extent permitted by law, Seller waives any lien or similar right it may have with respect to Buyer's Property. Seller will be responsible for personal property taxes assessed against Buyer's Property.

(b) Seller will (i) at its expense maintain Buyer's Property in good condition and repair, normal wear and tear excepted, throughout the useful life of Buyer's Property, (ii) use Buyer's Property only for the manufacture, storage, and transport of Products for Buyer unless Buyer otherwise approves in writing, (iii) at Buyer's request and expense, mark Buyer's Property as belonging to Buyer or its customer, and (iv) not remove Buyer's Property (other than shipping containers and the like) from Seller's premises without Buyer's written approval. All replacement parts, additions, improvements, and accessories to Buyer's Property will become part of Buyer's Property unless they can be removed without damaging Buyer's Property.

(c) Buyer will pay for Buyer's Property that it is required to purchase at the amount specified in the Contract or, if no amount is specified in the Contract, at (i) Seller's actual cost of the Buyer's Property, if manufactured by a third party, or (ii) Seller's actual cost of purchased materials, components, and services plus Seller's actual cost of labor and overhead allocable to the Buyer's Property, if manufactured by Seller. Buyer may elect to purchase Property that is used by Seller exclusively in the manufacture of Products or the performance of Services for Buyer. The applicable price for such Property will be as set forth in (i) and (ii) of this **Section 11.1(c)**.

(d) Seller will immediately release to Buyer upon request, and Buyer may retake immediate possession of, Buyer's Property and other property of Buyer or its customers at any time, with or without cause and without payment of any kind unless otherwise provided in the Contract. Seller will release the requested Property and other property to Buyer F.C.A. Seller's plant (Incoterms 2010), properly packed and marked in accordance with the requirements of Buyer's carrier. If the release or recovery of Buyer's Property or other property renders Seller unable to produce a Product, the release or recovery will be deemed a termination of the Contract with respect to that Product pursuant to **Section 12** or **13**, as applicable.

12. Term and Termination

12.1. *Generally.* Each Contract will remain in effect for the term specified in the Contract unless earlier terminated by Buyer pursuant to this **Section 12**. Upon termination of a Contract, Seller will assist Buyer in locating an alternative source for the Products and Services and in moving production to the alternate source selected by Buyer.

[Optional Provision Concept: The Contract will remain in effect for the life of the associated program.]

12.2. *Termination for convenience.* A Contract may be terminated by Buyer in whole or in part at any time and for any reason, or no reason, upon Buyer's written notice to Seller of such termination. Any such termination will be without liability to Buyer.

[Optional Provision Concept: Upon termination for convenience, Seller may submit all claims resulting from such termination. Any such claim may not include SG&A, interest costs or the cost of capital, lost profit or lost opportunity costs, fixed overhead absorption, capital equipment, facility costs, plant modification costs, labor assignment costs, training costs, etc. Buyer will consider and arrive at its own determination as to covering any such claim. Ref. C22.]

12.3. *Termination for Default.* A Contract may be terminated by Buyer in whole or in part at any time after the occurrence of a Default upon Buyer's written notice to Seller of such termination. Any such termination will be without liability to Buyer.

12.4. *Certain Purchases.* If Buyer terminates a Contract under this **Section 12**, then Buyer may, in its sole discretion, purchase completed Products in the possession of Seller at the Contract price and work-in-process and raw materials in Seller's possession at Seller's actual cost.

12.5. *Buyer's Property.* Upon a termination under this **Section 12**, Buyer may, pursuant to **Section 11.1(c)**, elect to purchase Property that is used by Seller exclusively in the manufacture of Products or the performance of Services for Buyer. If Buyer terminates a Contract for Buyer's Property before it is fully performed (other than for Seller's Default), Buyer will purchase the completed Buyer's Property at the Contract price and work-in-process and raw materials related to the uncompleted work at Seller's actual cost.

[Optional Provision Concept: Seller may terminate a Contract for Buyer's material breach of the Contract that is not remedied within 30 days of Seller's notice to Buyer of the material breach. Ref. C21.]

[Additional Provision Concept: Buyer may terminate the Contract if it determines that Seller is not price competitive, or competitive in terms of quality and delivery, and Seller fails to lower prices, or improve quality or delivery, to a competitive level. Ref. C21.]

13. Default

13.1. *Events of Default.* Time is of the essence and, subject to **Section 16**, Seller will be in “*Default*” under the Contract if it (a) fails to perform any obligation under the Contract and, if the non-performance can be cured, fails to cure the non-performance within 15 business days after notice from Buyer specifying the non-performance, (b) admits in writing its inability to pay its debts as they become due, commences a bankruptcy, insolvency, receivership, or similar proceeding, or makes a general assignment for the benefit of creditors, (c) becomes a debtor in a bankruptcy, insolvency, receivership, or similar proceeding commenced by a third party that is not dismissed within 30 days after commencement, (d) fails to provide adequate assurance of performance under the Contract within three business days after written demand by the other party, (e) repudiates a Contract, absent a legal right to do so, in writing, takes any action evidencing its intention not to perform (including threatening non-delivery of goods) or omits to take any action required to be performed by Seller that is necessary for Seller to timely deliver Products or Services under a Contract, or (f) fails to pay any trade payables or other accounts payable to Buyer, its subsidiaries or affiliates, incurred in the ordinary course of Seller’s business that are not reasonably disputed and that have been outstanding for more than 60 days after the date such payable is due.

13.2. *Remedies.*

- (a) Buyer may exercise the remedies provided in this **Section 13.2**, which are cumulative and are in addition to all other rights and remedies available elsewhere in the Contract or by law or equity.
- (b) Buyer may recover from Seller its damages, including but not limited to incidental and consequential damages, and costs directly or indirectly caused by Seller’s breach of the Contract, regardless of whether the breach subsequently becomes a Default with the passage of time or giving of notice or both.
- (c) Upon the termination of a Contract for Default, Buyer may recover from Seller the costs actually incurred to relocate the work to an alternate source.
- (d) If Seller does not release or deliver Buyer’s Property in accordance with **Section 11.1**, Buyer may at Seller’s cost (i) obtain an immediate court order for possession thereof without notice and without posting a bond, and (ii) enter Seller’s premises, with or without legal process, and take immediate possession of Buyer’s Property. To the extent permitted by law, Seller waives any right to object to Buyer’s repossession of Buyer’s Property and the other property in a bankruptcy or other proceeding.

14. Confidential Information

Trade secrets, know-how, manufacturing processes, specifications, drawings, notes, instructions, engineering data and analyses, compositions of matter, financial data, and other technical and

business data which are proprietary to and supplied or disclosed by either Buyer or Seller in connection with the Contract, in each case that are marked or otherwise identified as confidential or where their confidential nature is apparent at the time of disclosure (“**Confidential Information**”), will be deemed confidential and proprietary to, and remain the sole property of, the disclosing party. The receiving party may not disclose Confidential Information or use Confidential Information for any purpose other than as contemplated under the Contract without in each case the written consent of the disclosing party. Confidential Information will not include information that (a) is or becomes generally available to the public other than as a result of a violation of this **Section 14** by the receiving party, (b) was obtained by the receiving party on a non-confidential basis from a third party who had the apparent right to disclose it, (c) is legally required to be disclosed, or (d) Buyer must share with a third party to fulfill its obligations to its customers. Buyer and Seller will each use the same degree of care to safeguard Confidential Information that it uses to protect its own confidential information from unauthorized access or disclosure (but not less than a reasonable degree of care). Upon request by the disclosing party, the receiving party will promptly return or destroy the original and all copies of Confidential Information received.

15. Assignment

Seller may not assign or subcontract its duties or responsibilities under the Contract without the prior written consent of Buyer. Unless otherwise stated in the consent, any assignment or subcontracting by Seller, with or without the required consent, will not relieve Seller of its duties or obligations under the Contract or its responsibility for non-performance or Default by its assignee or subcontractor.

16. Excusable Non-Performance

A delay or failure by either party to perform its obligations under the Contract will be excused, and will not constitute a Default, only if (a) caused by an event or occurrence beyond the reasonable control of that party and without its fault or negligence, and (b) the party unable to perform gives notice of the non-performance (including its anticipated duration) to the other party promptly after becoming aware that it has occurred or will occur. If Seller is unable to perform for any reason, Buyer may purchase Products and Services from other sources and reduce its purchases from Seller accordingly without liability to Seller. Within three business days after written request by the other party, the non-performing party will provide adequate assurances that the non-performance will not exceed 30 days. If the non-performing party does not provide those assurances, or if the non-performance exceeds 30 days, the other party may terminate the Contract by notice given to the non-performing party before performance resumes.

17. Labor Contracts

Seller will notify Buyer of the contract expiration date at least six months before the expiration of a current labor contract that has not been extended or replaced. Buyer may thereafter direct Seller in writing to manufacture up to 30 days of additional inventory of Products, specifying the quantities of Products required and any packaging and storage requirements. Seller will comply with Buyer’s written directions prior to expiration of the current labor contract and until the

current labor contract has been extended or a new contract completed. Seller is responsible for carrying costs and any additional costs of manufacture relating to additional inventory.

18. Customs

Transferable credits or benefits associated with Products purchased, including trade credits, export credits, or rights to the refund of duties, taxes, or fees, belong to Buyer unless otherwise prohibited by applicable law. Seller will provide Buyer with all information and records relating to the Products necessary for Buyer to (a) receive these benefits, credits, and rights, (b) fulfill any customs obligations, origin marking or labeling requirements, and certification or local content reporting requirements, (c) claim preferential duty treatment under applicable trade preference regimes, and (d) participate in any duty deferral or free trade zone programs of the country of import. Seller will obtain all export licenses and authorizations and pay all export taxes, duties, and fees unless otherwise stated in the Contract, in which case Seller will provide all information and records necessary to enable Buyer to obtain those export licenses or authorizations.

19. Insurance

Prior to commencing work on Buyer's premises or utilizing Buyer's property (including Buyer's Property), Seller will maintain and upon request furnish to Buyer a certificate evidencing (a) general liability insurance with coverage limits acceptable to Buyer and naming Buyer as an additional insured, (b) all risk property perils insurance covering the full replacement value of Buyer's Property while in Seller's care, custody, or control and naming Buyer as loss payee, and (c) worker's compensation insurance as required by applicable law.

20. Dispute Resolution and Governing Law

Each Contract and all transactions between Buyer and Seller will be governed by and construed in accordance with the laws of [insert Buyer's state]. The United Nations Convention on Contracts for the International Sale of Goods is not intended to and does not apply to a Contract or any transactions pursuant thereto, and Buyer and Seller specifically waive its application to any Contract or any transactions pursuant thereto. For all disputes arising out of a Contract, Seller irrevocably consents to the personal jurisdiction of the state and federal courts in and for [insert Buyer's county and state], USA, which are the exclusive venue for any such suit.

21. Miscellaneous

21.1. *Advertising.* During and after the term of the Contract, Seller will not advertise or otherwise disclose its relationship with Buyer or Buyer's customers without Buyer's prior written consent, except as may be required to perform the Contract or as required by law.

21.2. *Audit Rights.* Seller grants to Buyer access to all of Seller's information, including but not limited to, books, records, payroll data, receipts, correspondence, and other electronic and non-electronic documents relating to Products or Services, Seller's obligations under the Contract, any payment made to Seller, or any claim made by Seller, as reasonably required for the purpose of auditing or verifying Seller's performance of its obligations under the Contract and its charges therefore. Seller will preserve this information and these documents for a period

of four years after the final payment is made under the Contract. In addition, Buyer has the right to visually inspect and audit any facility or process relating to Products or Services. Buyer has the right to make copies of any information that it may audit hereunder.

21.3. Electronic Communication. Seller will comply with the method of electronic communication specified by Buyer in Buyer's request for quotation and confirmed in the Contract, including requirements for electronic funds transfer, purchase order transmission, electronic signature, and communication. Seller will also make commercially reasonable efforts to comply with any modification to Buyer's specified method of electronic communication after the date of the Contract, subject to **Section 1.2**.

21.4. Relationship of the Parties. Buyer and Seller are independent contractors, and nothing in the Contract makes either party the agent or legal representative of the other party for any purpose. Neither party has authority to assume or to create any obligation on behalf of the other party.

21.5. Waiver. The failure of either party to enforce any right or remedy provided in the Contract or by law on a particular occasion will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy.

21.6. Entire Agreement. The Contract constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior oral or written representations or agreements by the parties with respect to the subject matter of the Contract, including Buyer's request for quotation and Seller's quotation unless specifically incorporated in the Contract. Except as authorized in **Section 1.2**, no subsequent terms, conditions, understandings, or agreements purporting to modify the terms of the Contract will be binding unless in writing and signed by both parties.

21.7. Severability. A finding that any provision of the Contract is invalid or unenforceable in any jurisdiction will not affect the validity or enforceability of any other provision of the Contract or the validity or enforceability of that provision in any other jurisdiction.

21.8. Interpretation. When used in these Terms and Conditions, "including" means "including without limitation" and terms defined in the singular include the plural and vice versa.

21.9. Notices. Any notice or other communication required or permitted in the Contract must be in writing and will become effective on the date of actual receipt if the date of actual receipt is a business day or on the next business day if the date of actual receipt is not a business day.